

47
A

QUESTION

CONCERNING

The great and weightie Affairs of
the whole Kingdome.

SH EW I N G,

How Lawes are to be understood, and Obedience
yeilded?

This Answer to the aforesaid Question, necessary for the
present state of things touching the *Militia.*

Published for the good of the Common-wealth.



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Q V E S T I O N

ANSWERED:

Question.

NOW in our extreame Distractions, when forraign forces threaten, and propably are invited, and a malignant and Popish party at home offended? The Devil hath cast a bone, and raised a contestation between the King and Parliament touching the Militia.

His Maiesty claims the disposing of it to be in Him by right of Law; The Parliament saith rebus sic stantibus, and nolenti Rege, the Ordering of it is in them?

A 3

Answer



Answer.

VV High Question, may receive its solution by this distinction. That there is in Laws an equitable, and a litterall sense. His Majesty (let it be granted) is intrusted by Law with the *Militia*, but it's for the good and preservation of the Republique, against Forraign Invasions, or Domestique Rebellions.

For it cannot be supposed, that the *Parliament* would ever by Law intrust the King with the *Militia* against themselves, or the *Common-wealth*, that intrusts them to provide for their Weal, not for their woe.

So that when there is certain appearance grounded suspicion, that the Letter of the Law shall be improved against

gainst the *Equity* of it (that is, the
publique good, whether of the body
reall or representative) then the Com-
mander going against its *Equity*, gives
Liberty to the Commanded to refuse
Obedience to the Letter: for the Law
taken abstract from its originall reason
and end, is made a shell without a ker-
nell, a shadow without a substance, and
a body without a soul. It is the Execu-
tion of Laws according to their *Equi-
ty and Reason*, which (as I may say) is
the spirit that gives life to Authority,
the Letter kills.

Nor need this *Equity* be expressed in
the Law, being so Naturally implied
and supposed in all Laws that are not
merely Imperiall, from that Analogy,
which all bodies politique hold with
the Naturall; whence all Government
and Governors borrow a proportiona-
ble Respect; And therefore when the
Militia of an Army is committed to
the General, it is not with any expresse

condition, that he shall not turn the
mouths of his *Canons* against his Own
Souldiers; for that is so Naturally and
necessarily implied, that its needlesse
to be exprest, in omuch as if he did
attempt or command such a thing a-
gainst the nature of his trust and place,
it did *ipso facto* estate the Army, in a
right of disobedience, except we think
that obedience binds Men to, cut their
own throats, or their companions.

And indeed if this distinction be not allow-
ed, then the Legall and mixt *Monarchy* is the
greatest *Tiranny*, for if Laws invest the King in
an absolute power, and the letter be not contro-
led by the equity, then whereas other Kings that
are absolute *Monarcks* and rule by will, and not
by Law, are Tyrants perforce. Those that rule
by Law and not by will, have hereby a *Tirany*
confer'd upon them legally, and so the very end
of Laws, which is to give bounds and limits to
the exorbitant wills of Princes, is by the Laws
disappointed, for they hereby give corroboration
(and much more Iustification to an arbitrary
Tyranny, by making it legall, not assumed; which
Laws are ordained to crasse not countenance;
and

and therefore is the latter (where it seems abso-
lute) alwayes to receive quallification
from the Equity, else the for-
said absurdity must
follow.

*Published for the good of the Common-
Weale.*



FINIS.



and the motto is the same (which is the motto of the
King) always to receive punishment
from the Holy, etc. etc. for
this is the motto
follow.





A COUNTER-PLEA

to the *Cowards Apologie*, manifest-
ing by an ancient Record
and Law;

The unlawfullnesse of passing any *Vite* or
Judgement against Law, or Conscience, for feare of Death,
Danger, or any forfeiture, in any Court, Counsell or
Indicature, especially in the Houses of
PARLIAMENT.



In the Parliament of 1. * H. 4. Some Lords and * Fabiana
others excusing themselves from their unjust il- Chron.
legall actions, and votes in the Privy-Councell, part. 7 An.
that what they advised and did, was by con- 1 H. 4.

straint of King Richard, and for feare of death;
The whole House of Commons thereupon exhibited this no-
table Petition to the King in Parliament, [worthy to be en-
graven on the walls of both Houses in Letters of Gold] *

That the Lords, Spirituall and Temporall, and other persons * 1 H. 4.
might not be received in time to come for to excuse them, to say Nym. 97.

that they durst not to doe or speak the Law, For what
they thought For doubt of death; Or that they were not
free of themselves: because they are more bound under-
pain of Treason to keepe their Oath [or doe their duty]
then to feare death or any forfeiture. And hereupon
as * Fabian writes] there passed this Law in Parliament

THAT NO LORD, NOR OTHER PERSON of no degree
should after that day, lay for his excuse, ANY CONSTRAINT
OR COACTING OF HIS PRINCE IN EXECUTING

A

OF

* Chro-
nicle: part.
7. 1. H. 4.